IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1282 OF 2005

CEAT INDIA LIMITED,
a company incorporated under the
Companies Act, 1956, having its
registered office at Ceat House, Worli,
Mumbai 25 and having its Automotive
Tyre Factory Division at Bhandup (West),
Mumbai 400 078 ... Petitioner

V/S

SHRIRANG RAMACHANDRA DESHMUKH
1/7, Ramnagar, Katrak Road, Wadala,
Mumbai 400 031. ..... Respondent

Mr. S. K. Talsania i/b. Sanjay Udeshi & Co. for petitioner
Ms. Gayatri Singh for respondent .

CORAM: D. G. KARNIK **J.**

DATE: 18/7/2006

ORAL JUDGMENT :

1. Heard counsel for the parties.
2. By this petition the petitioner challenges the judgment and award dated 30th September 2004 passed by the Labour Court, Mumbai, ordering reinstatement of the respondent.
3. The respondent was employed as a workman by the petitioner

company in its factory. The respondent was chargesheeted alleging that he was adopting go slow tactics. In the domestic enquiry the respondent was found guilty and the order of dismissal was passed by the petitioner on 18th March 1992. Aggrieved by the order of dismissal the respondent moved the Government for a reference of the industrial dispute regarding his dismissal. The dispute was referred to the Labour Court. By part I of the award dated 30th May 2000 the Labour Court held that the enquiry was illegal, improper and unjust and therefore permitted the petitioner to adduce evidence in support of the order of dismissal. After considering the evidence adduced before it the Labour Court came to the conclusion that the second party was not guilty of any misconduct. In view of this the Labour Court set aside the order of dismissal dated 18th March 1992 and directed the petitioner to reinstate the respondent with full back wages and continuity of service. That order is impugned in this petition.

4. On 29th June 2005 this court issued writ and granted interim stay to the impugned award to the extent of payment of back wages only. The order of reinstatement was not stayed.

Counsel for the parties submit that this order was challenged by both the parties by filing separate letters patent appeals, both of which have been dismissed. Learned counsel for the petitioner submits that in view of the interim order the respondent has been reinstated in service and since then he is working satisfactorily and giving normal production. There is no grievance regarding the present working of the respondent.

5. Learned counsel for petitioner firstly submitted that the finding of the Labour Court that the enquiry was perverse was not proper and further finding on appreciation of evidence adduced before it that the respondent had not committed any misconduct is grossly erroneous rendering it to be perverse. He secondly submitted that in any event the order of awarding full back wages was illegal and contrary to the law laid down by the Supreme Court in **Allahabad Jal Sansthan Vs. Daya Shankar Rai**, reported in 2005 (II) CLR 453 and **U.P.State Brassware Corporation Ltd.vs. Uday Narayan Pande,** reported in 2006(1) SCC 479. He submitted that the workman had nowhere pleaded that he was unemployed from the date of the termination till reinstatement and remained so unemployed. In

the circumstances the Labour Court erred in passing the order of payment of back wages.

6. So far as the first submission of the learned counsel for the petitioner is concerned, I find that in part I of the award the Labour Court has given sufficient reasons why it came to the conclusion that the enquiry was illegal, improper and unjust. The finding recorded by the Labour Court that the enquiry was illegal, improper and unjust, in my view, is a proper finding and in any event a possible finding of fact. It is settled principle of law that a finding of fact recorded by a Labour Court cannot be interfered with in exercise of the writ jurisdiction unless the finding is shown to be perverse. No perversity is shown in the said finding. The contention that the finding in Part I of the award declaring the enquiry is illegal, improper and unjust is so erroneous as to render it perverse has to be rejected.

7. The petitioner adduced the evidence before the Labour Court to justify the order of termination. On appreciation of the evidence the Labour Court came to the conclusion that there was no merit in the claim of the petitioner that the respondent was adopting

go slow tactics. The petitioner adduced evidence of the production given by the respondent. Considering the figures of production the Labour Court came to the conclusion that the petitioner had not proved that the production given by the respondent was less. The Labour Court has given cogent reasons for its conclusion. It has held that if the respondent was giving less production and the petitioner had any grievance about it , it would have issued memos to him. No memos were issued to the respondent. No grievance was made at any time about the less production. It also held that the production figures given by the respondent was not verified and that there were mistakes of calculation in the production sheets. The witness of the petitioner had admitted in his cross examination that the calculations made by the respondent regarding the production were not checked and verified by the witness who was complaining of less production. The supervisor has not made any specific entries in the production sheet that the production was less. In my view the Labour Court has given sufficient reasons for coming to the conclusion that the petitioner had not proved that the production given by the respondent was less. This is a possible finding of fact based on appreciation of

evidence.

8. It may also be noted that there is a difference between the production being less and deliberate go slow in the work. Despite all efforts the production may be less than the norms fixed and that would not ipso facto prove that the workman had adopted go slow tactics. Nobody was examined to show that the respondent was wasting time or was deliberately doing the work slowly. In these circumstances the finding recorded by the Labour Court that the petitioner had not proved the go slow tactics is not only a possible view but a more probable view and I see no reason to interfere with that view in exercise of writ jurisdiction.

9. The contention of the petitioner that the Labour Court erred in granting back wages without proper pleading, however, needs to be accepted. In **Allahabad Jal Sansthan vs. Daya Shankar Rai & Anr.,** reported in 2005 II CLR 453 the Supreme Court has held that the law cannot be laid down in absolute terms to state in what circumstances full back wages can be granted. The Labour Court or the Industrial Court before whom the industrial

dispute is raised would be entitled to grant relief regarding back wages having regard to the facts and circumstances of each case by taking into consideration several factors. The fact whether the workman was gainfully employed during the period he was out of service is a relevant consideration. In a claim for back wages the workman must plead and prove that he was idle and had not obtained any other employment in the interregnum.

10. In U.P. State Brassware Corpn. Ltd. & anr. vs. Uday Narain Pandey, reported in (2006) 1 SCC 479 the Supreme Court extensively reviewed all its earlier decisions and in para 43 noted the shift in the later decisions of the court, probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation, and outsourcing. The court held that when the question of determining the entitlement of a person to back wages was concerned the employee would have to show that he was not gainfully employed in the interregnum. The initial burden is on him. After he places the material in that regard the employer can bring on record the material to rebut.

11. In the present case the respondent has not pleaded in his claim statement before the Labour Court that he was not gainfully employed during the interregnum. The evidence on record on whether the respondent was employed elsewhere in the interregnum is also not sufficient and satisfactory. The employer does not appear to have adduced evidence regarding employment of the respondent during interregnum probably because there was no pleading by the respondent about his unemployment. In the circumstances the Labour Court erred in passing an order of reinstatement with full back wages without there being any pleading and proof of unemployment of the respondent in the interregnum. However, since the law regarding the payment of back wages has undergone substantial change recently and that has been settled by the Supreme Court in its decision in U.P. State Brassware Corpn. Ltd. (supra) it would be proper to remand the matter back for the Labour Court to consider the issue of back wages after permitting the respondent to amend the pleadings and adduce evidence regarding the entitlement to the back wages.

12.Accordingly the writ petition is partly allowed. The impugned

judgment and award is set aside to the extent of the order of payment of back wages. The judgment and award to reinstate the respondent is upheld. The matter is remanded back for deciding the entitlement of the respondent to back wages. For that purpose the respondent is permitted to amend the pleading giving the particulars of his employment or unemployment . Thereafter the respondent shall adduce evidence afresh regarding his employment or unemployment and the petitioner will be allowed to adduce evidence in rebuttal. After considering the evidence adduced by the parties the Labour Court shall consider the question of back wages afresh. The Labour Court may decide the matter expeditiously.

(D. G. KARNIK **J**)